



28 AUG 2007

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In re Application of:  
Stellwagen  
Application No.: 10/581,336  
Int. App. No.: PCT/DE04/02705  
Int. Filing Date: 08 December 2004  
Priority Date: 09 December 2003  
Attorney Docket No.: 128174  
For: Hydraulic Controller Arrangement

DECISION ON  
PETITION UNDER  
37 CFR 1.182

This is in response to the petitions filed on 20 February 2007 and 23 August 2007, which are being treated together under 37 CFR 1.182.

### BACKGROUND

International application PCT/DE04/02705 was filed on 08 December 2004, claimed a priority date of 09 December 2003, and designated the United States. The 30 month period for payment of the basic national fee in the U.S. ended as of midnight on 09 June 2006. On 02 June 2006, applicant filed *inter alia* the basic national fee.

### DISCUSSION

Petitioner refers to certain documents allegedly filed on 13 June 2006, 19 June 2006 and 22 August 2006. Petitioner states that

These documents were inadvertently filed with the wrong U.S. application number listed on them. The documents identified U.S. application number 10/581,366 instead of their correct U.S. application number 10/581,336. However, the correct PCT application number was identified on the PCT Transmittals, which accompanied all these documents. Therefore, Applicant respectfully requests that the above-identified documents be transferred to the correct application number 10/581,336 and the dates of filing these documents be listed as their original filing dates indicated on the date-stamped Patent and Trademark Office's receipts.

Review of the application file reveals that the correspondence filed on 19 June 2006 has been associated with this file, despite having been directed to application no. 10/581,366. The correspondence allegedly filed on 13 June 2006 is present neither in the instant application file nor in 10/581,366. Regarding the correspondence allegedly filed on 22 August 2006, none of said correspondence is present in the instant application file, though a one-sheet IDS, a one-sheet PTO-1449 and 2 sheets of International Search Report (ISR) are present in 10/581,366.

Petitioner provides "photocopies of a PCT Transmittal and Declaration filed on June 13, 2006... and a PCT Transmittal, Information Disclosure Statement, PTO Form 1449, International search report and three references filed on August 22, 2006. Copies of the date-stamped receipts for these three filings are also enclosed." Inspection of the return postcard receipt stamped as

received by "OIPE JUN 13 2006" reveals that it itemizes a "chk# 180848 (\$130); PCT Trans; Dec.," while inspection of the return postcard receipt stamped as received by "OIPE AUG 22 2006" reveals that it itemizes an "IDS; 1449; ISR; w / 3 refs." MPEP 503 provides in part that "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, the PCT Transmittal Letter and Declaration filed on 20 February 2007 are being accepted as copies of the corresponding documents originally filed on 13 June 2006, while the three foreign references filed on 20 February 2007 are being accepted as copies of the corresponding documents originally filed on 22 August 2006. Treatment of the postcard pertaining to the 19 June 2006 filing is unnecessary since the complete 19 June 2006 submission is already of record.

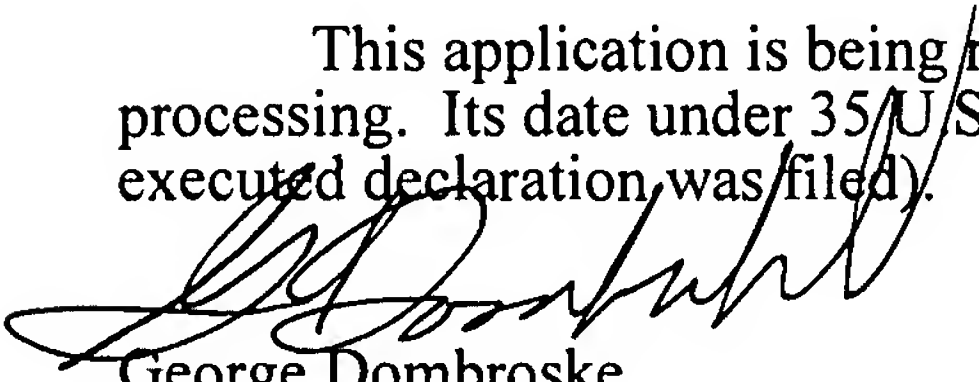
As noted by counsel, the correspondence filed on 13 June 2006, 19 June 2006 and 22 August 2006 was misdirected to application no. 10/581,366 rather than the instant application. However, each said submission also properly identified at least the applicant, title and attorney docket number of the instant national stage application. In view of the explanation proffered by counsel to the effect that the correspondence in question was inadvertently directed to the wrong application number, and in view of the petition under 37 CFR 1.182 filed on 23 August 2007, the correspondence at issue is being accepted into the instant application file, each paper retaining its filing date. Specifically, this includes the declaration and fee transmittal filed on 13 June 2006; the transmittal and 3.73(b) statement, General Power of Attorney and Assignment filed on 19 June 2006, and the IDS, 1449, ISR and three references filed on 22 August 2006.

### DECISION

The petition under 37 CFR 1.182 is **GRANTED**, as described above.

Counsel's Deposit Account No. 15-0461 is being charged in the amount of \$400.00 for the petition under 37 CFR 1.182, as authorized on 23 August 2007.

This application is being returned to the National Stage Processing Branch for further processing. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **13 June 2006** (i.e., the date the executed declaration was filed).



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